

August 21, 2008 DRAFT WCA Rule Sections 6-10

Below are the last five draft sections of the re-formatted WCA Rule (not including Definitions and References). They are:

1. Replacement Wetland Banking
2. Inspection and Monitoring of Replacement Wetlands
3. Wetland Planning
4. Appeals, Compensation, and Enforcement
5. Activities Under Department of Natural Resources Authority

These are in draft form and will change as the rulemaking process progresses and we continue to address comments received. However, many changes have been made and the new order of the re-structured rule is taking shape.

Key:

Plain black = original and unchanged text

Red underline = added text

~~Red strikeout~~ = deleted text

~~Grey background with strikeout~~ = text was relocated to a different location in the rule

Yellow background = text was moved to that location from a different location in the rule

Bold black italic = note to identify new or previous location of text

Note: The text boxes and explanations shown in previous rule drafts are not included here.

STANDARDS AND CRITERIA FOR STATE WETLAND BANKING

8420.0700~~XXXX~~ PURPOSE.

The purpose of parts 8420.0700~~XXXX~~ to 8420.0760 ~~XXXX~~ is to provide standards for the establishment and administration of a state wetland banking system as authorized by Minnesota Statutes, section 103G.2242. The purpose of the state wetland banking system is to provide an efficient, market-based structure that allows for replacement of unavoidable impacts with pre-established replacement wetlands.

The board or the board's assignee is responsible for management of the bank including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with parts 8420.0700 ~~XXXX~~ to 8420.0760 ~~XXXX~~.

The preceding sentence was relocated here from 8420.0730.

~~8420.0720 PRINCIPLES OF WETLAND BANKING.~~

~~Subpart 1. **Goal.** Implementation of a wetland banking system must comply with the purposes and goals of the act by achieving a no-net-loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands.~~

~~Subp. 2. **Sequencing prerequisite.** The state wetland banking system may only be used for replacement of drained or filled wetlands when the local government unit determines that the applicant has complied with all of the sequencing requirements of part 8420.0520 and that the owner of the account agrees to the withdrawal of wetland banking credits from the account.~~

~~Subp. 3. **Geographic limitations.** Wetland banking is allowed for any impact subject to the requirements of part 8420.0543.~~

8420.XXXX ESTABLISHMENT OF A WETLAND BANK SITE.

Subpart 1. Application procedures.

~~In cases where a wetland is~~ When replacement actions are proposed to be restored or created solely for wetland banking purposes, ~~that is, the wetland is not part of a project-specific wetland replacement plan,~~ the wetland banking plan applicant must submit to the local government unit a banking plan containing the information required in part 8420.0530XXXX, items A and D. A copy of the banking plan shall ~~must~~ be mailed to ~~members of the technical evaluation panel,~~ the administrator of the state wetland bank, ~~members of the public who have requested a copy, the commissioner of natural resources,~~ the district office of the United States Army Corps of Engineers, and ~~the watershed district or watershed management organization if there is one~~ those required to receive a copy of an application in part 8420.XXXX. As part of its initial review and comment on the banking plan, the technical evaluation panel may recommend specific performance standards that are linked to a credit allocation schedule. The wetland banking plan applicant must be advised of any performance standards and credit allocation schedule recommended by the panel. Based on input from the technical evaluation panel and other comments received, the local government unit must determine the likelihood that the ~~restoration or creation~~ replacement actions will be successful and approve, modify, or ~~reject deny~~ the banking plan ~~based on the panel's findings and recommendation.~~ *The language in the above subpart was relocated here from the previous 8420.0740, subparts F and I.*

Subp. 2. Replacement for banking and project specific. When a banking plan applicant wishes to use a portion of the credits generated for project specific replacement, the banking application must identify the project and the amount of credits to be used according to a corresponding replacement plan. The credits must meet the requirements of part XXXX and the approved replacement plan, and be deducted prior to deposit of any credits into the state wetland bank.

Subp. 43. Eligible wetlands replacement. ~~Except as provided for in item A, i,~~ In order to deposit wetland acres into the wetland bank, the wetland banking plan applicant must notify the local government unit in writing, before restoration or creation, that the proposed wetland replacement is specifically designated for deposit into the wetland bank. This notification may be part of the documentation requested in ~~item F~~ The banking plan application. ~~After July 1, 1993, wetlands restored or created~~ Replacement actions initiated or established without prior local government unit approval ~~as specified in this part of a banking plan~~ are not eligible for deposit into the wetland bank. Only wetland and buffer replacement areas eligible for replacement credit under parts 8420.0540 to 8420.0549 are eligible for deposit in the state wetland bank. *The first three sentences of this paragraph were relocated here from the previous 8420.0740.*

Subp. 5. Ineligible wetlands. Wetlands that are drained or filled under an exemption in part 8420.0122 and subsequently restored are not eligible for deposit in the wetland bank. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

Subp. 2 4. Deposit prerequisites. To be deposited into the state wetland bank, a replacement wetland must be ~~certified~~ approved as eligible for deposit by the local government unit in which it is located, according to part 8420.0740XXXX, subpart 4 X. If a local government unit elects to ~~certify~~ approve replacement wetlands for deposit in the wetland bank, the local government unit is also responsible for ensuring that the monitoring provisions in part 8420.0750 are fulfilled. A local government unit may decline to ~~certify~~ approve all wetlands banking applications within its jurisdiction or, based on a comprehensive local water or wetland protection and management plan, a local government unit may elect to ~~certify~~ approve replacement wetlands for deposit into the wetland bank only in selected areas, for example, high priority regions and areas. If the local government unit elects to reject or limit banking, it must do so by rule or ordinance, as applicable. The board may reject or modify an application for deposit if, during its review, any part of the bank application or plan is missing, incorrect, or inconsistent with this chapter. *The preceding subpart was relocated here from the previous 8420.0730.*

~~Subp. 6. **Account balance.** Accounts must maintain a positive balance. A wetland bank account shall specify acreage by wetland type deposited by the account holder minus subsequent withdrawals.~~

~~Subp. 7. **Wetland banking credit withdrawals and transfers.** Wetland banking credits may be withdrawn to provide replacement pursuant to an approved replacement plan or equivalent. Wetland banking credits may also be transferred to another account holder for future use or resale if a conservation and access easement has been recorded as required in subpart 8. Wetland banking credits may be withdrawn from an account or transferred to another account by submittal of such requests on forms provided by the board along with any authorized fees. No sale, withdrawal, or transfer of credits is final until the board approves and debits the account of origin.~~

Subp. ~~8~~**5. Conservation and access easement.** No credits may be deposited in the state wetland bank until a perpetual conservation easement, in a format provided by the board, is granted to and accepted by the state. The easement must encompass the entire replacement wetland and buffer, unless the local government unit and the board approve an alternate boundary at the time of bank application approval. The easement shall provide for preservation of the banked wetland's functions by the fee owner and wetland banking plan applicant. The wetland banking plan applicant must also provide a title insurance policy that is acceptable to the state naming the state of Minnesota as the insured. If the conservation easement does not abut a public road, the fee owner and wetland banking plan applicant must also grant and record an access easement in favor of the board, the local government unit, and any ~~other state, local, or~~ federal regulatory authority that has authorized use of credits from the site for mitigation. The boundary of bank areas must be clearly marked as prescribed in the conservation and access easement. *The preceding sentence was relocated from the previous subpart 10 below.* This subpart does not apply to state land.

~~Subp. 8a. **Reporting of sale of credits.** The owner of an account in the state wetland bank must report the sale of credits to the board on withdrawal or transfer forms prescribed by the board and include a copy of the bill of sale. Proposed withdrawals are not complete until at least one regulatory authority has approved the use of the subject credits for a specific purpose. Failure to report credit sales may result in restrictions on withdrawals until the account is reconciled.~~

~~Subp. 9. **[Repealed, 27 SR 135]**~~

~~Subp. 10. **Marking of boundaries of bank areas.** The boundary of bank areas must be clearly marked as prescribed in the conservation and access easement.~~ *The preceding sentence was relocated to the new subpart 5 above.*

~~Subp. 11. **Administrative fees.** The board and local government units may collect administrative fees for managing wetland banking accounts.~~

~~Subp. 12. **Wetland banking appeals.** Appeals of the local government unit banking determinations are taken according to part 8420.0250.~~

~~Subp. 13. **Fees established.** Fees must be assessed for managing wetland bank accounts and transactions as follows:~~

~~A. account maintenance annual fee: one percent of the value of credits not to exceed \$500;~~

~~B. account establishment, deposit, or transfer: 6.5 percent of the value of credits not to exceed \$1,000 per establishment, deposit, or transfer; and~~

~~C. withdrawal fee: 6.5 percent of the value of credits withdrawn.~~

~~Subp. 14. **Fees paid to board.** All fees established in subpart 13 must be paid to the Board of Water and Soil Resources and credited to the general fund to be used for the purpose of administration of the wetland bank.~~

Subp. 6, 7, 8a, 11, 13, and 14 were relocated to the new Account Administration and Transactions part and partially consolidated.

8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.

Subpart 1. **Establishment.** The board shall establish a state wetland bank. ~~The board or the board's assignee is responsible for management of the bank including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with parts 8420.0700 to 8420.0760. The board shall notify all local government units upon establishment of the bank. Any~~

~~separate banking system including those established by local governments must comply with parts 8420.0700 to 8420.0760 and must be approved by the board and the commissioner.~~

~~Subp. 2. **Deposit prerequisites.** To be deposited into the state wetland bank, a wetland must be certified as eligible for deposit by the local government unit in which it is located, according to part 8420.0740, subpart 1. If a local government unit elects to certify wetlands for deposit in the wetland bank, the local government unit is also responsible for ensuring that the monitoring provisions in part 8420.0750 are fulfilled. A local government unit may decline to certify all wetlands within its jurisdiction or, based on a comprehensive local water or wetland protection and management plan, a local government unit may elect to certify wetlands for deposit into the wetland bank only in selected areas, for example, high-priority regions and areas. If the local government unit elects to reject or limit banking, it must do so by rule or ordinance, as applicable. The board may reject or modify an application for deposit if, during its review, any part of the bank application or plan is missing, incorrect, or inconsistent with this chapter.~~

~~Subp. 3. **[Repealed, 27 SR 135]**~~

Part of subpart 1 was relocated to the Purpose and Establishment part of this section. Subpart 2 was relocated to the new Establishment of a Wetland Bank Site part of this section.

8420.0740XXXX BANKING CREDIT AND DEPOSIT PROCEDURES.

Subpart 1. Deposits and Certification of credits.

~~A. Wetland replacement credits approved before July 1, 1993, are eligible for deposit into the state wetland banking system if the wetland replacement credit was authorized by a public agency specifically for a wetland bank that has been approved by the commissioner. Also, wetland replacement credits that have been deposited in a local government unit bank before July 1, 1993, and after January 1, 1992, are eligible for deposit into the state wetland banking system if the deposit meets all the criteria in parts 8420.0700 to 8420.0760 based on a site inspection and review by the board and the commissioner.~~

~~B. After July 1, 1993, wetlands restored or created without prior local government unit approval as specified in this part are not eligible for deposit into the wetland bank. **The preceding sentence was relocated to subpart 3 of the Establishment of a Wetland Bank Site part in this section and edited there.**~~

A. The wetland banking plan applicant shall must contact the local government unit to request a determination of wetland bank site acceptability and approved quantities of wetland banking credits for initial and subsequent deposits. Local government unit certification of credits for deposit in the bank must be based on the findings and recommendation of the technical evaluation panel. The technical evaluation panel shall must ensure that sufficient time has been allowed for the wetland to become established, especially vegetation and hydrology, before making this determination.

~~GB. There is no maximum or minimum wetland acreage eligible for deposit in the wetland bank. Based on the recommendation of the technical evaluation panel, the local government unit must identify the acreage that will may receive credit. The acreage must be based on a land survey or comparable method of field measurement of the credit areas recommended for deposit. The person making the measurement must certify in writing as to the method and accuracy of the measurement.~~

~~D. The initial deposit of wetland banking credits must be done by the fee title owner or easement holder of the wetland bank area. **The preceding sentence was relocated to Subpart 2, A below.**~~

~~E. Except as provided for in item A, in order to deposit wetland acres into the wetland bank, the wetland banking plan applicant must notify the local government unit in writing, before restoration or creation, that the proposed wetland is specifically designated for deposit into the wetland bank. This notification may be part of the documentation requested in item F. In cases where excess wetland acreage is expected to result from a specific replacement plan according to parts 8420.0530 to 8420.0550, the owner must indicate on the replacement plan that the excess acreage is to be considered available for wetland banking or lose the opportunity to use the excess credits for future projects. If the excess credit is less than 1.0 acre, an account may be established without the need to grant a perpetual conservation easement to the state of Minnesota. **The first two sentences of the above paragraph were relocated to subpart 1 of the Establishment of a Wetland Bank Site part in this section.**~~

~~F. In cases where a wetland is proposed to be restored or created solely for wetland banking purposes, that is, the wetland is not part of a project-specific wetland replacement plan, the wetland banking plan applicant must submit to the local government unit a bank plan containing the information required in part 8420.0530, items A and D. The bank plan must include design plans that show structural, earthmoving, and vegetative management components. The plan must clearly show existing jurisdictional wetlands and areas proposed to receive credit, and be signed, dated, and consistent with part 8420.0550. A copy of the bank plan shall be mailed to members of the technical evaluation panel, the administrator of the state wetland bank, members of the public who have requested a copy, the commissioner of natural resources, the district office of the United States Army Corps of Engineers, and the watershed district or watershed management organization if there is one. Based on input from the technical evaluation panel and other comments received, the local government unit must determine the likelihood that the restoration or creation will be successful and approve, modify, or reject the banking plan. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99, which generally requires a decision to be made within 60 days of receipt of a complete application. The local government unit decision must be mailed to the wetland banking plan applicant within ten working days of the decision. A summary of the government unit decision must be mailed within ten working days of the decision to those required to receive notice of the application.~~

Portions of the previous item H above were relocated to subpart 1 of the Establishment of a Wetland Bank Site part in this section.

~~G. In cases where a wetland is to be restored or created by an agency, department, or subdivision of the local government unit for deposit into the wetland bank, the local government unit must prepare the information required in part 8420.0530, items A and D, and notice this information according to item F.~~

~~HC. The Establishment of proposed wetland replacement must be restored or created initiated within two three years of banking plan approval or the banking plan must be resubmitted for consideration. Upon approval, the wetland banking plan applicant shall restore or create the wetland and notify the local government unit when construction has been completed. The technical evaluation panel shall inspect the site when construction is completed to ensure that construction specifications and the vegetation management plan have been followed. Failure to follow approved construction specifications and the vegetation management plan is sufficient grounds for the local government unit to deny consideration of the wetland for banking.~~ ***The preceding sentence was relocated to the new item B below.***

Subp. 2. Deposit of credits.

~~A. The initial deposit of wetland banking credits must be done by the fee title owner or easement holder of the wetland bank area.~~

~~IB. Up to 15 percent of the proposed credits are eligible for deposit in the bank immediately after completion of the construction and vegetative planting has been completed and certified in accordance with part XXXX, Replacement Wetland Construction Certification, and a conservation and access easement has been recorded in accordance with part XXXX subpart 5, if all of the following subitems apply:~~

- ~~(1) For projects that contain elements that include dams, dikes, or other impoundment features, the construction plans were designed, overseen, and certified by a registered professional engineer.~~
- ~~(2) The technical evaluation panel certifies that the initial planting has been completed in accordance with the vegetation management plan.~~
- ~~(3) The provisions of part 8420.0720, subpart 8, have been complied with.~~

~~Failure to follow approved construction specifications and the vegetation management plan is sufficient grounds for the local government unit to deny consideration of the wetland for banking. The remaining proposed credits may be eligible for deposit no sooner than six months after construction has been completed and approved for restored wetlands, and no sooner than one year after construction has been completed and approved for created wetlands in accordance with the credit release schedule and performance standards included in the approved banking plan. If the approved banking plan does not contain a credit release schedule and associated performance standards, remaining credits will be~~

eligible for deposit based on the findings and recommendation of the technical evaluation panel regarding the success of the proposed replacement action. The wetland banking plan applicant shall contact the local government unit to request a determination of wetland bank acceptability and approved quantities of wetland banking credits for initial and subsequent deposits. The technical evaluation panel shall ensure that sufficient time has been allowed for the wetland to become established, especially vegetation and hydrology, before making this determination. **The preceding two sentences were relocated to subpart 1 A above.**

If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel must postpone its recommendation to the local government unit until the wetland has stabilized. As part of its initial review and comment on the bank plan, the panel may recommend specific performance standards that are linked to a credit allocation schedule. The wetland banking plan applicant must be advised of any performance standards and credit allocation schedule recommended by the panel.

Based on a site visit, the technical evaluation panel will determine the size and type of wetland as well as topographic setting characteristics and, if applicable, the new wetland credits and public value credits resulting from the to be deposited wetland. The technical evaluation panel will provide the information to the local government unit.

JC. The local government unit shall consider the recommendations of the technical evaluation panel and comments from those required to receive a copy of the banking plan prior to developing findings. The After approval, the local government unit shall review and approve wetland banking credits and must submit the complete wetland bank application for deposit, wetland bank project application, and plans to the board. No credits will be deposited until receipt of the complete approved application by the board. If the wetland banking plan applicant chooses not to proceed with the deposit, the wetland banking plan applicant may return the wetland to its preconstruction condition without replacement within five years.

The preceding sentence was relocated to item F below. At any time within the five-year monitoring period required in part 8420.XXXX, the wetland banking plan applicant may request the board to deposit any or all eligible and approved credits into the bank or may amend the banking plan and resubmit the plan to the local government unit for board certification. After five years, any activity in the wetland is subject to this chapter.

KD. To be deposited into the bank, the following information concerning the wetland must be submitted to the board by the wetland banking plan applicant or by local government unit in which the wetland is located: The application for deposit of credits must be in a form provided by the board and must contain the following information:

- (1) name, address, and telephone number of the wetland banking plan applicant;
- (2) a complete copy of the wetland banking plan application and local government unit approval, supporting documents, and a legal boundary survey of the land area that will be subject to restrictions (for initial deposit only);
- (3) a copy of the deed for the property containing the wetland and any easement if the wetland banking plan applicant is not the fee owner (for initial deposit only);
- (4) a copy of the recorded conservation and access easement in accordance with part 8420.XXX subpart 5;
- (5) size amount of the wetland acreage replacement credit to be deposited, to the 0.1 acre, by wetland type and topographic setting characteristics and, if applicable, the new wetland credits and public value credits; and
- (56) local government unit certification that the wetland is approved for deposit into the bank other information required by the board.

LE. The board shall must acknowledge the deposit to the wetland banking plan applicant and local government unit and officially enter the information in item K into the wetland bank. Information on deposited wetlands shall be available from the board on request according to subpart 2, item D.

MF. If the wetland banking plan applicant chooses not to proceed with the initial deposit, the wetland banking plan applicant may return the wetland replacement area to its preconstruction condition without replacement within five years. Wetlands Replacement areas wholly or partially deposited into the

~~wetland~~ bank, on which withdrawals have occurred or which otherwise have been used for replacement, are subject to this chapter, including replacement for any subsequent drainage or filling impacts.

~~N. Wetlands deposited into the wetland bank are subject to the monitoring provisions in part 8420.0750. The preceding sentence is covered under the Auditing and Monitoring part of this section.~~

8420.XXXX BANK ACCOUNT ADMINISTRATION AND TRANSACTIONS.

~~Subpart. 71. Wetland b~~**Banking credit withdrawals and transfers transactions.** ~~Wetland b~~**Banking credits may be withdrawn to provide replacement pursuant to an approved replacement plan or equivalent. Wetland b**Banking credits may also be transferred to another account holder for future use or resale if a conservation and access easement has been recorded as required in ~~subpart 8 XXXX~~. ~~Wetland b~~**Banking credits may be withdrawn from an account or transferred to another account by submittal of such requests on forms provided by the board along with any authorized fees. No sale, withdrawal, or transfer of credits is final until the board approves and debits the account of origin and, when necessary for transfers, establishes the new account.** *The above subpart was relocated here from the previous 8420.0720.*

Subp. 2. Withdrawals.

~~A. Before consideration of use of the wetland bank, replacement plan applicants must satisfy the requirements of part 8420.0520 or equivalent.~~

~~BA.~~ Credits from the state wetland bank may be used to ~~mitigate~~ replace wetland losses authorized by local government units or other local, state, and federal regulatory authorities provided the impacted wetland is within the state of Minnesota and the credit withdrawal procedures of this chapter are followed.

~~C. When using the wetland bank to replace drained or filled wetlands, the replacement must comply with parts 8420.0540 to 8420.0549.~~

~~D. The board, on request, will provide the following information to persons making inquiries concerning available wetland bank deposits with a local government unit jurisdiction, county, or watershed:~~

~~(1) account holder: name, address, and telephone number;~~

~~(2) available wetlands: wetland acres by type and topographic setting characteristics, and, if applicable, the new wetland credits and public value credits;~~

~~(3) location: section, township, range, county, and watershed.~~

The language above was relocated to Subpart 7 below.

~~EB.~~ The applicant may contact, negotiate, and purchase the required wetland banking credits from the account holder. In order to use banking credits for replacement, the user of the credits must arrange for the acquisition and withdrawal of credits from the bank account holder. When the account holder and applicant come to agreement, the applicant ~~will~~ must provide ~~the requested~~ requested information requested on a wetland banking credit withdrawal form developed provided by the board, and include the wetland banking credit withdrawal form as part of the wetland replacement plan transmitted to the local government unit. ~~The wetland banking credit withdrawal form will include information indicating the wetland type by acres for withdrawal, location of banked wetland, and the topographic setting characteristics and, if applicable, the new wetland credits and public value credits of the banked wetland.~~

~~F. The local government unit must circulate the applicant's wetland replacement plan and the wetland banking credit withdrawal form to identify specific wetland banking credits as the applicable replacement wetland, using the public comment and review process in part 8420.0230 and to the local government unit whose jurisdiction covers the location of the wetland banking credits. The local government unit must contact the board to verify that replacement credits indicated on the wetland banking credit withdrawal form are available before final approval of wetland bank withdrawals. The preceding sentence was reworded in subpart 4 of the Application and Decision Procedures part of the Local Government Unit Duties and Procedures section.~~

~~G.C. On approval of the applicant's wetland replacement plan using wetland banking credits as wetland replacement, the local government unit shall notify the board to debit the appropriate account by type and amount. The board will complete the accounting transactions and send a notice of wetland banking credit withdrawal to the account holder and the applicant. The preceding two sentences were relocated to~~

subpart 6 of the Application and Decision Noticing Procedures part of the LGU Duties and Procedures section. No sale, withdrawal, transfer, or use of wetland banking credits is valid until the board debits a wetland bank account. Wetland Banking credits may be only used once.

~~H. The applicant shall not be allowed to begin proposed drain or fill activities until the local government unit formally approves the wetland replacement plan using the acknowledged wetland banking credits as replacement and the applicant has received notice of withdrawal of the wetland banking credits from the board or local government unit. The language in the previous item H will be relocated to the~~
Replacement Standards section.

Subp. 3. Transfers. An individual, corporation, local government unit, state or federal agency, or other organization may buy and hold wetland banking credits from account holders in the bank for later use or resale. Transfer of wetland banking credits must be accomplished through use of a board wetland banking credit transfer form provided by the board, and must be maintained in an account in the state wetland banking system. An account will be established for the individual or organization on presentation to the board of a wetland banking credit transfer form, and evidence that the perpetual conservation easement required by part 8420.0720XXXX, subpart 8X, has been recorded. The board will notify both account holders on transfer of the wetland banking credits.

Subp. 8a4. Reporting of sale of credits transactions. Upon completion of the transaction, the owner of an account in the state wetland bank must report the sale, use, or transfer of credits to the board's banking administrator on withdrawal or transfer forms prescribed by the board and include a copy of the bill of sale when applicable. Proposed withdrawals are not complete until at least one regulatory entity with authority over the use of the credits has approved the use of the subject credits for a specific purpose. Failure to report credit sales may result in restrictions on withdrawals until the account is reconciled. The above subpart was relocated here from the previous 8420.0720.

Subp. 65. Account balance. Accounts must maintain a positive balance. A wetland bank account shall must specify acreage by wetland type deposited by the account holder minus subsequent withdrawals.

Subp. 116. Administrative fees. The board and local government units may collect administrative fees for managing wetland banking accounts. ~~Subp. 13. Fees established. The following fees must be assessed for managing wetland bank accounts and transactions as follows Subp. 14. Fees paid to board. All fees established in subpart 13 must be paid to the Board of Water and Soil Resources and credited to the general fund board to be used for the purpose of administration and monitoring of the wetland bank:~~

- A. account maintenance annual fee: one percent of the value of credits not to exceed \$500;
- B. account establishment, deposit, or transfer: 6.5 percent of the value of credits not to exceed \$1,000 per establishment, deposit, or transfer; and
- C. withdrawal fee: 6.5 percent of the value of credits withdrawn.

Subp. 7. Account information and available credits. The board, on request, will provide the following information to persons making inquiries concerning available wetland bank deposits within a local government unit jurisdiction, county, or major watershed, or bank service area:

- (1) account holder: name, address, and telephone number;
- (2) acres of available wetlands credits: wetland acres by type and topographic setting characteristics, and, if applicable, the new wetland credits and public value credits; and
- (3) location: section, township, range, county, and major watershed, and bank service area.

The new Subparts 6 and 7 above were relocated here from the previous 8420.0720. Subpart 7 was relocated here from the previous 8420.0740.

8420.0750XXXX AUDITING AND MONITORING OF BANK SITES.

Subpart 1. Annual report and audit.

A. The board will develop ~~wetland bank credit~~ deposit, withdrawal, and ~~credit transfer and withdrawal~~ forms and ~~distribute~~ make them available to local government units ~~indicating a desire to certify restored wetland banking credits for deposit in the wetland bank.~~

B. The ~~wetland~~ bank data file maintained by the board will contain at least the following information:

(1) ~~wetland replacement~~ acres by type and replacement action, ~~topographic setting characteristics~~, restoration or creation date, and bank acceptance date, fee owner, location ~~by~~ (public land survey coordinates, local government unit, county, ~~and~~ major watershed and bank service area of the banked wetland); ~~and~~

(2) previous withdrawals against each banked wetland by impact wetland (wetland acres by type, ~~topographic setting characteristics~~, and, ~~if applicable, the new wetland credits and public value~~ credits, ~~date of wetland impact~~), ownership (fee owner, address, telephone number) and location (public land survey coordinates, local government unit, county, and watershed of the impacted wetland); and

(3) the original copy of the recorded conservation and access easement for the site and a title insurance policy naming the State as an insured party.

C. The board may periodically inspect ~~wetland~~ bank records and correspondence maintained by a local government unit to determine compliance with this part.

~~D. A wetland bank status report shall be prepared as part of the report required by Minnesota Statutes, section 103G.2373, and distributed by the board to applicable local government units, soil and water conservation districts, watershed districts, watershed management organizations, the departments of natural resources and agriculture, and on request.~~

Subp. 2. Monitoring.

~~A. After the wetland is entered into the bank, the local government unit responsible for monitoring under part 8420.0230 and the wetland banking plan applicant shall continue monitoring according to parts 8420.0600 to 8420.0630. A copy of each monitoring report must be submitted to the local government unit and the board. Monitoring must begin after certification of construction in accordance with 8420.XXXX, Replacement Wetland Construction Certification, and must conform to the monitoring requirements of 8420.XXXX, Replacement Wetland Monitoring. Failure to comply with the monitoring requirements of 8420.XXXX may result in the freezing of the bank account by the board until the required reports are submitted.~~

B. The board ~~shall~~ must inspect wetlands deposited into the ~~wetland~~ bank ~~at least once each five years~~ in a time period and frequency sufficient to ensure that the ~~wetlands conform to conditions specified in the approved bank plan, and to make a determination of needed~~ easement conditions are being met. The ~~board may require~~ corrective actions if necessary to gain compliance with easement conditions.

8420.0760XXXX BANKING ENFORCEMENT AND CORRECTIVE ACTIONS.

A. The fee owner and the ~~wetland~~ banking applicant, if different from the fee owner, are jointly and severally responsible for the success of the ~~wetland~~ banking project and maintaining the ~~wetland~~ banking project in accordance with the approved ~~wetland~~ banking plan both during and after monitoring. The ~~wetland~~ banking plan applicant, if different from the fee owner, is not responsible after monitoring if the ~~wetland~~ banking plan applicant no longer owns an easement interest in the real estate or credits associated with the banked wetland.

B. If, on inspection, the board determines that wetlands deposited in the ~~wetland~~ bank are not in compliance with this chapter, the board must prescribe corrective measures to the local government unit and fee owner or ~~wetland~~ banking plan applicant to bring the ~~wetland bank site~~ into compliance.

C. If satisfactory remediation does not result, the board may refuse future wetland bank ~~certifications~~ approvals by the local government unit and future deposits from the fee owner or ~~wetland~~ banking plan applicant.

D. If, ~~whether~~ during ~~or after the completion of~~ the monitoring period, a local government unit or the technical evaluation panel determines that a banked ~~wetland site~~ does not ~~substantially~~ meet the specifications in the approved banking plan, the local government unit ~~or technical evaluation panel~~ must notify the board. The board ~~shall~~ must restrict further withdrawals and transfers of all credits associated with the ~~wetland bank site, whether held by the wetland banking plan applicant or a subsequent account holder,~~ until the local government unit, ~~or technical evaluation panel,~~ or notifies the board, ~~or the board otherwise determines,~~ that the ~~wetland~~ banking project has been brought into compliance.

E. The local government unit or the board may undertake reconstruction work and require reimbursement of reasonable costs from the fee owner or ~~wetland~~ banking plan applicant.

F. Fee owners, ~~wetland~~ banking plan applicants, or account holders may appeal restrictions on credit withdrawals and transfers or demands for reimbursement of reconstruction costs to the ~~dispute resolution committee of the board~~ which shall make a recommendation to the full board.

G. Noncompliance with easement conditions or impacts to ~~wetland banking projects sites~~ are subject to enforcement under part 8420.0290XXXX.

INSPECTION AND MONITORING OF REPLACEMENT WETLANDS

8420.XXXX REPLACEMENT WETLAND CONSTRUCTION CERTIFICATION

Subp. 1. **Purpose.** The local government unit must certify the initial construction of replacement wetlands prior to replacement wetland monitoring. The local government unit may require a preconstruction meeting prior to initiation of replacement wetland construction and may inspect the replacement wetland at any time during construction. This part applies to both wetland banking and project specific replacement.

Subp. 2. **Construction as-builts.** Upon completion of initial construction or restoration activities, the landowner must provide the local government unit with as-built information that documents compliance with the approved replacement plan. As-built information includes but is not limited to:

A. surveyed elevations of slopes, contours, outlets, and dikes;

B. seed tags and contractor receipts or other documentation of seeding or planting;

C. description of site preparation activities such as mulching, seedbed preparation, seeding methods, or initial weed control activities;

D. a survey map showing relevant areas of seeding and construction activities;

E. construction photos showing relevant restoration work; and

F. a comparison of the as-built specifications versus the design specifications (first annual plan only) and a description and rationale for significant changes.

Subp. 3. **Construction inspection and certification.** Upon receipt of as-built information from the landowner, the local government unit must inspect the replacement wetland to determine whether the as-built complies with the project when construction is complete and certify compliance with construction specifications of the approved replacement plan. The local government unit and may inspect the project at any time during the construction and monitoring periods, and any time after that to assess the long-term viability of the replaced wetland. If the local government unit determines that the construction is not

in compliance with the approved plan, it must promptly notify the landowner of the deficiencies and actions required to gain compliance. When the local government unit certifies that the construction specifications have been met, the local government unit shall so advise must notify the applicant and technical evaluation panel, and return any construction bond or other construction security that the applicant had provided. Upon construction certification, the local government unit may release a portion of any financial assurance the applicant had provided, while retaining a sufficient amount to ensure compliance with monitoring and replacement requirements.

The above part was expanded from a few sentences that were relocated here from the previous 8420.0620.

8420.0600XXX REPLACEMENT WETLAND MONITORING

Subpart 1. Purpose. The purpose of replacement wetland replacement monitoring is to measure replacement wetland success relative to the goals of the approved replacement plan and to identify any needed corrective actions during the monitoring period. ensure that the replacement wetland achieves the goal of replacing lost functions and values.

Subpart 2. Responsibilities.

A. Monitoring of replacement wetlands is the responsibility of the landowner of the property where the replacement wetland is located. Any agreements regarding the transfer of monitoring responsibilities must be agreed upon by both parties in writing, and do not release the applicant from the responsibility to provide replacement as specified in the approved replacement plan. The local government unit, at its discretion, may prepare the annual report for the applicant and may charge fees for preparing the report.

B. The local government unit in which the replacement wetland is located is responsible for ensuring compliance with the approved monitoring plan. For project-specific replacement in which the wetland impact site occurs in a different local government unit from the replacement site, the local government unit for the impact site may assume the monitoring enforcement responsibility for the replacement site upon written agreement between the local government units.

8420.0610 DURATION OF MONITORING. **Subpart 3. Duration of Monitoring.** Monitoring shall be by means of an annual report as specified in part 8420.0620 and shall continue for five years following completion of the wetland replacement project, or until the technical evaluation panel deems the replacement wetland to be fully functional.

A. Monitoring must begin no later than the start of the first full growing season following local government unit construction certification. Monitoring must continue for a minimum of three full growing seasons and until the local government unit determines, with the concurrence of the technical evaluation panel, that the replacement is successful.

B. Through written notification to the applicant, the local government unit may must extend the required monitoring period, for up to two additional full growing seasons, for not more than an additional five-year period if the goals of the replacement plan has have not been achieved, but, in the written opinion of the technical evaluation panel, may be achieved with more time.

C. If the goals of the replacement plan have not been achieved after the fifth season of monitoring but, in the written opinion of the technical evaluation panel, may be achieved with more time, the local government unit may, through written notification of the applicant, extend the monitoring period for not more than an additional five growing seasons.

D. The local government unit's notification of extension must specify the reasons for the extension and any corrective actions necessary to bring the replacement wetland into compliance with the approved plan.

E. The local government unit may not extend the monitoring period beyond the end of the tenth full growing season after the beginning of the monitoring period unless:
(1) the approved replacement or banking plan includes a longer term monitoring period; or
(2) the applicant and the technical evaluation panel agree that replacement or banking plan goals may still be achieved with more time.

F. For project-specific replacement plans, if the local government unit determines that, at any time during the monitoring period and based on the recommendation by the technical evaluation panel, the goals of the replacement have not been achieved, and will not be achieved with more time, the local government unit must pursue one or more corrective actions identified in 8420.06X0 Local Government Unit Monitoring Oversight.

8420.0620 MONITORING ANNUAL REPORT.

Subpart 14. Purpose Monitoring annual reports.

A. Requirement. Following construction certification by the local government unit, the applicant must submit annual monitoring reports documenting the progress of the replacement wetlands during the monitoring period. The purpose of the annual report is to describe actual wetland restoration or creation activities completed during the past year, activities planned for the upcoming year, and the success of the replacement in achieving identified goals and performance standards information in subpart 2. The applicant shall submit the annual report to the appropriate local government unit according to subpart 2B, where the replacement wetland is located on a date determined by the local government unit but no later than December 31 until the applicant has fulfilled all of the requirements of the local government unit. The local government unit, at its discretion, may prepare the annual report for the applicant. The local government unit must distribute copies of the monitoring report to the technical evaluation panel. For wetland banking projects, the applicant must also submit the annual report to the board's wetland banking administrator. The monitoring reports must be submitted annually, or semi-annually if the local government unit determines that, after the third full growing season, semi-annual reports are sufficient for long term monitoring, until the local government unit determines the replacement has been successful.

Subp. 2- B. Report content. The annual report shall, at minimum, include the following information and other site-specific information identified by the local government unit:

A1. a description of the project location map with legal description, size, current wetland type (Cowardin classification), and desired wetland type (goal);

B2. a comparison of the as-built specifications versus the design specifications (first annual plan only) and a rationale for significant changes description of replacement wetland goals and performance standards in terms of size, replacement credit amount, plant community types, hydrology, and wetland functions and a comparison of the current replacement wetland to these goals and standards;

3. description of restoration activities completed during the past year;

4. description of restoration activities planned for the upcoming year;

C5. hydrology measurements during the growing season: seasonal water level elevations at fixed, repeatable locations representative of the replacement wetland types, or areal coverage measurements during the period April through October of inundation for replacement wetlands with deeper water hydrologic regimes (deep marsh, shallow open water, shallow marsh);

D6. a map of plant communities within the boundaries of the replacement site, hydrologic indicators observed including square footage or acreage of each and identification of areas of invasive or non-native vegetation; and

E7. color photographs of all replacement areas the project area taken anytime during the growing season from fixed, repeatable reference locations that are representative of each plant community type;

8. delineation and survey of the replacement wetland areas, if applicable, for the final monitoring year and;

9. other information specified in the approved monitoring plan or subsequently requested by the local government unit;

8420.0630XXXX MONITORING DETERMINATIONS BY THE LOCAL GOVERNMENT UNIT MONITORING RESPONSIBILITIES.

The local government unit responsible for monitoring as determined under part 8420.0230:

A. must inspect the project when construction is complete and certify compliance with construction specifications, and may inspect the project at any time during the construction and monitoring period, and any time after that to assess the long-term viability of the replaced wetland. When the local government unit certifies that the construction specifications have been met, the local government unit shall so advise the applicant and return any construction bond or other construction security that the applicant had provided;

The paragraph above was relocated to the Construction Certification part of this section and edited there.

Subpart 1. Monitoring Oversight.

A. The local government unit must evaluate all monitoring reports for compliance with report requirements and must determine if the replacement plan goals can be met within the specified monitoring period based on the current condition of the replacement wetland and the applicant's proposed management activities for the following growing season.

B. ~~may order corrective action at any time during the required monitoring period if it the local government unit determines that the goals of the approved replacement plan will not be met, it and may require the applicant to prepare an amended wetland value replacement plan for review and approval by the local government unit, which describes in detail the corrective measures to be taken to achieve the goal of replacing lost wetland functions and values;~~

C. ~~shall make a finding based on a site visit at the end of the monitoring period as to whether the goal of the replacement plan has been met. If the goal of the replacement plan has not been met, the local government unit shall order corrective action and extend the monitoring period; and~~

D. ~~shall require one or more of the following actions if during the monitoring period the local government unit finds that the goal of the replacement plan will not be met:~~

(1) ~~order specific corrective actions on the replacement wetlands;~~

(2) ~~order the applicant to prepare and implement a new or revised replacement plan;~~

(23) ~~request the enforcement authority to issue a cease and desist order on the draining and filling wetland impact activity if it has not been completed;~~

(34) ~~request the local soil and water conservation district and enforcement authority to order restoration of the impacted wetland;~~

(45) ~~obtain forfeiture of a bond or other security and use the proceeds utilize any financial assurance collected from the applicant to replace the lost wetland functions and values;~~

(56) ~~ask the pursue a district court to order requiring the applicant to fulfill the replacement plan; or~~

(67) ~~other actions that the local government unit determines necessary to achieve the goals of the replacement plan.~~

C. A local government unit responsible for monitoring oversight that does not receive required monitoring reports associated with an approved replacement plan application shall either pursue enforcement actions in Part B or utilize any financial assurance the applicant had provided, in an amount sufficient to complete monitoring requirements.

Subpart 2. Certification of successful replacement and completion of monitoring. Upon completion of the minimum monitoring period, the applicant may request a field review by the local government unit and technical evaluation panel of the success of the replacement wetland. If the replacement is determined successful, the local government unit must provide written notification to the applicant that the replacement is certified successful and the monitoring requirements have been fulfilled. Upon certification of successful replacement the local government unit must release any remaining financial assurance submitted by the applicant, provided all other conditions of the approval are met.

WETLAND PLANNING

8420.0650XXXX LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

Subpart 1. **General requirements and participation Purpose and eligibility.**

A. As an alternative to the rules adopted under Minnesota Statutes, section [103G.2242, subdivision 1](#), and the public value criteria established or approved under Minnesota Statutes, section [103B.3355](#), a comprehensive wetland protection and management plan may be developed by a local government unit, or one or more local government units operating under a joint powers agreement, provided that: the requirements of this part are met. This part provides minimum standards. Local government units must require equivalent or greater standards and procedures for wetland conservation, but not less.

~~(1) a notice is made at the beginning of the planning process to the board, the commissioner of natural resources, the Pollution Control Agency, local government units, and local citizens to actively participate in the development of the plan; and~~

~~(2) the plan is implemented by ordinance as part of the local government unit's official controls under Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city; Minnesota Statutes, chapter 366, for a town; and by rules adopted under Minnesota Statutes, chapter 103D, for a watershed district; and Minnesota Statutes, chapter 103B, for a watershed management organization.~~

~~B. An organization that is invited to participate in the development of the local plan, but declines to do so and fails to participate or to provide written comments during the local review process, waives the right during board review to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan. The technical evaluation panel must be consulted in all components of plan and ordinance development including, but not limited to, conducting wetland functional assessments, establishing wetland management classifications, and identifying local reference standard wetlands.~~

~~C. After board approval and local government adoption, replacement plan, exemption, and no-loss determinations are made according to the plan and ordinance. This part provides minimum standards. Local government units must require equivalent or greater standards and procedures for wetland conservation, but not less.~~

B. The ultimate goal of a plan is to maintain and improve the quality, quantity, and biological diversity of wetland resources within watersheds through the prioritization of existing wetlands and the strategic selection of replacement sites. The purpose of developing a plan is to provide a watershed and ecosystem based framework to make wetland impact and replacement decisions that meet state standards and locally identified goals, and support the sustainability or improvement of wetland resources in watersheds while providing local flexibility as allowed under subpart 4.

C. Subp. 7. Local program capacity requirements. Any local government unit opting to pursue incorporating this chapter into local ordinance must provide documentation to the board demonstrating local capacity to implement the plan program consistent with requirements prescribed in part 8420.0200, subpart 2, item A.

Subp. 2. Relationship to other plans. ~~G.~~ To maximize effectiveness, the comprehensive wetland protection and management plan may should be developed as part of, or in conjunction coordination with, a local water plan, other relevant local or regional plans and requirements. The plan should provide a mechanism for integrating local land use decisions with wetland ecosystem management goals at the watershed level.

Subp. 3. Plan area. To the extent practical and feasible, the plan should be based on watershed boundaries. The size of watershed addressed should not be larger than is appropriate to ensure that the wetland resources provided through replacement will effectively compensate for approved impacts. For local governments with multiple watersheds, a separate analysis should be completed for each watershed

substantially within the local government's jurisdiction. Local governments should consider joint planning efforts for those watersheds that cross political boundaries.

Subp. 24. **Plan contents-Flexibility options under a local plan.** The comprehensive wetland protection and management component of the local water plan may:

~~A. provide for classification of wetlands in the plan area based on:~~

~~(1) an inventory of wetlands in the plan area;~~

~~(2) an assessment of the wetland functions listed in part 8420.0103, using a methodology chosen by the technical evaluation panel from one of the methodologies established or approved by the board; and~~

~~(3) the resulting public values;~~

~~BA.~~ vary application of the sequencing standards in part 8420.0520XXXX, for projects based on the classification and criteria set forth in the plan;

~~GB.~~ vary the replacement standards of part 8420.0540XXXX, based on the classification and criteria set forth in the plan, ~~for specific wetland impacts~~ provided there is no net loss of public values within the area subject to the plan, and so long as:

(1) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of ~~drained or filled impacted~~ wetland requiring replacement is met within the area subject to the plan; and

(2) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of ~~drained or filled impacted~~ wetland requiring replacement is met within the area subject to the plan, ~~except that replacement for the amount above a 1:1 ratio can be accomplished as described in part 8420.0540, subpart 2;~~

~~DC.~~ in a greater than 80 percent area, allow replacement credit, based on the classification and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres;

~~ED.~~ in a greater than 80 percent area, based on the classification and criteria set forth in the plan, expand the application of the exemptions in part 8420.0122, subpart 1, item B, to also include nonagricultural land, provided there is no net loss of wetland values;

~~FE.~~ prescribe standards for size and location of replacement wetlands by establishing type requirements, size/ratio requirements, functional quality requirements, location requirements, and ~~criteria for~~ wetland mitigation fee in lieu of direct replacement ~~criteria~~. Requirements for replacement must have a direct relationship with wetland classification as defined in the plan and must result in no net loss of wetland quantity, quality, and biological diversity over the life of the plan ~~which cannot exceed ten years; and~~

~~GF.~~ allow exemptions based on ordinance standards, eligibility criteria, and processes that are not less restrictive than the requirements in parts 8420.0115, 8420.0122, and 8420.0210 based on wetland classifications as defined in the plan, ~~; and~~

~~H. define and establish high priority wetland areas pursuant to parts 8420.0350 and 8420.0400.~~

Subp. 2a. **Project notice and appeal under local ordinance.**

~~A. The local government unit shall submit to the commissioner of natural resources, the watershed district if there is one, local government units, members of the technical evaluation panel, and local citizens who request it, a copy of the application and provide at least 15 days' notice for comments and a schedule for a hearing if one is to be held. A copy of all decisions shall be forwarded to those mentioned above within ten days of the action.~~

~~B. Appeals of ordinance decisions. Persons may appeal replacement plan, no-loss and exemption determinations made pursuant to an approved wetland ordinance according to the procedures defined in part 8420.0250.~~

Subp. 5. Plan content.

A. Assessment of existing conditions and determination of watershed goals. The plan must be based on an analysis of the ecological conditions of the plan area and the development of corresponding goals for maintaining and improving those conditions. The ecological condition of the plan area should be based on inventories of historic and existing wetland resources, including identification of degraded wetlands, existing high quality wetlands, and immediate and long-term resource needs within the plan area. This analysis may be completed as part of the comprehensive wetland protection and management plan, or adopted from a relevant local or regional water plan if one exists.

AB. Classification of existing wetlands. The plan may provide for the classification of wetlands in the plan area based on:

- (1) an inventory of wetlands in the plan area;
- (2) an assessment of the wetland functions listed in part [8420.0103](#), using a methodology chosen by the technical evaluation panel ~~from~~ **and based on** one of the methodologies established or approved by the board; **and**
- (3) **landscape position, adjacent habitats or buffers, connectivity with or between important resources, projected land use, and other watershed-scale criteria; and**
- (4) the resulting public value.s;**

C. Inventory and prioritization of replacement sites. The plan must include an analysis of the types and locations of replacement projects that will provide the desired wetland functions, benefit the watershed from a landscape perspective, and best offset losses of public value caused by approved impacts. The goal of this analysis is to provide a framework from which replacement actions and locations will provide the greatest value to the public based on the ecological needs of the watershed. Priority should be given to naturally self-sustaining replacement that best achieves watershed goals and improves the ecological condition of the watershed. The plan must include strategies for the promotion and establishment of high priority replacement sites that best meet the goals of the plan.

D. High priority areas. Comprehensive wetland protection and management plans developed as part of county, watershed district, or watershed management organization plans may identify those areas that qualify as high priority areas for wetland preservation, enhancement, restoration, and establishment according to 8420.XXXX.

E. Assessing plan effectiveness. The plan should include a provision for periodic assessment of the effectiveness of the plan, and the local government unit's implementation of it, in achieving plan goals. Updates to previously approved plans should include an analysis of the effectiveness of the previous plan, including the identification of barriers to achieving identified goals and development of strategies to overcome them.

F. Effective date and expiration. The plan must specify the period covered by the plan, which must extend at least five years but no more than ten years from the date the board approves the plan.

Subp. 6. Plan development and review process.

A. (1) aA notice of intent to plan must be sent, is made at the beginning of the planning process, to the ~~board~~ **technical evaluation panel**, the ~~commissioner~~ **Department of Natural Resources**, ~~the Department of Agriculture~~, the Pollution Control Agency, **watershed management organizations within the plan area**, local government units **within and adjacent to the plan area**, and **the United States Army Corps of Engineers local citizens with an invitation** to actively participate in the development of the plan.; **and** The notice should also include a general description of the planning effort, the planning area, and an anticipated timeline.

B. The technical evaluation panel must be consulted in all components of plan and ordinance development including, but not limited to, conducting wetland functional assessments, establishing

wetland management classifications, prioritizing replacement sites, and identifying local reference standard wetlands.

C. The local government unit must have a process for notifying and involving local citizens in the development of the plan and determination of local values. Local citizen involvement can include the formation of a citizen's advisory committee or utilization of other existing citizen groups.

D. Upon completion, the local government unit must submit the draft plan and ordinance for a 60-day review and comment period to those required to receive notice in item A of this subpart. The local government unit must respond in writing to any comments received during the review period within 30 days of the end of the review period.

E. The local government unit must conduct a public hearing on the plan no sooner than 30 days after the end of the 60-day review period but before submittal of the final draft plan to the board for approval.

F. After conducting the public hearing but before final adoption, the local government unit must submit the plan and ordinance, all written comments received, a record of the public hearing, and a summary of responses to comments and changes incorporated as a result of the review process to the board for review under subpart 7 of this part.

BC. An organization that is invited to participate in the development of the **draft** local plan, but declines to do so **and or** fails to participate or to provide written comments during the local review process, waives the right during **board the review under item D** to submit comments, except comments concerning consistency of the plan with laws and rules administered by that agency. In determining the merit of an agency comment, the board shall consider the involvement of the agency in the development of the local plan.

H. Except as otherwise provided for in this part, all other requirements relating to development of the plan must be consistent with the local water plan processes under Minnesota Statutes, section **103B.231, 103B.311, or 103D.401.** A plan developed as part of a local water management plan may follow the review and approval process applicable to the local water management plan instead of items D, E, and F of this subpart.

Subp. ~~37~~. **Board ~~review and approval decision~~; mediation; judicial review.**

A. The board shall make a decision to approve or disapprove a plan within 60 days of receipt of a complete and final draft of the plan and ordinance as required in subpart 6F of this part. The board may disapprove all or parts of the plan if the board determines it does not meet the requirements of this part. If the board has not made a decision within 60 days of receipt of the final plan, the plan is deemed approved 60 days after the local government unit submits the final plan to the board, unless the board disagrees with the plan as provided in item D.

~~B. The board may not disapprove a plan if the board determines the plan meets the requirements of this part.~~

~~CB.~~ In its review of a plan, the board shall advise the local government unit of those elements of the plan that are more restrictive than state law and rules.

~~DC.~~ If the board disagrees with the plan or any elements of the plan, the board shall, in writing, notify the local government unit of the plan deficiencies and suggested changes. The board shall include in the response to the local government unit the scientific justification, if applicable, for the board's concerns with the plan. Upon receipt of the board's concerns with the plan, the local government unit has 60 days to revise the plan and resubmit the plan to the board for reconsideration, or the local government unit may request a hearing before the board. The board shall hold a hearing within the boundaries of the jurisdiction of the local government within 60 days of the request for hearing. After the hearing, the board shall, within 60 days, prepare a report of its decision and inform the local government unit.

~~ED.~~ If, after the hearing, the board and local government unit disagree on the plan, the board shall, within 60 days, initiate mediation through a neutral party. If the board and local government unit agree in writing not to use mediation or the mediation does not result in a resolution of the differences between the parties, then the board may commence a declaratory judgment action in the district court of the county where the local government unit is located. If the board does not commence a declaratory judgment action within the applicable 60-day period, the plan is deemed approved.

~~FE.~~ The declaratory judgment action must be commenced within 60 days after the date of the written agreement not to use mediation or 60 days after conclusion of the mediation. If the board commences a declaratory judgment action, the district court shall review the board's record of decision and the record of decision of the local government unit. The district court shall affirm the plan if it meets the requirements of this part.

~~G. The comprehensive wetland protection and management plan may be developed as part of, or in conjunction with, a local water plan. Except as otherwise provided for in this part, all other requirements relating to development of the plan must be consistent with the local water plan processes under Minnesota Statutes, section 103B.231, 103B.311, or 103D.401.~~

Subp. 49. **Effective date and amendments.**

A. The plan becomes effective after approval by the board as provided in subpart 37 and after adoption of the plan into the official controls of the local government unit.

B. Comprehensive wetland protection and management plans remain effective according to subp. 5F, unless revised according to subp. 6. Plans that contain revision dates inconsistent with this part must comply with that date provided it is not more than 10 years beyond the date of board approval. An extension of the revision date of the plan may be granted by the board.

C. All amendments to the adopted plan and ordinance become effective upon completion of the same process required for the original plan, except when the proposed amendments constitute minor amendments and; must be approved by the board:

(1) a public hearing has been held to explain the amendments;

(2) the local government unit has sent copies of the amendments to those required to receive notice in subpart 6; and

(3) the board has either agreed that the amendments are minor or failed to act within 60 days of receipt of the amendments.

~~C. After the effective date of the plan, a local government unit shall make replacement, exemption, no loss, and other determinations consistent with the plan.~~

D. For the purposes of this subpart, minor amendments include clarifications, updates to wetland or replacement site inventories, and other changes that do not substantially alter the standards of the approved plan and ordinance, as determined by the board. Amendments required to bring the plan into conformance with revisions to this chapter may also be considered minor.

~~Subp. 5. [Repealed, 27 SR 135]~~

~~Subp. 6. [Repealed, 27 SR 135]~~

~~Subp. 7. **Local program capacity requirements.** Any local government unit opting to pursue incorporating this chapter into local ordinance must provide documentation to the board demonstrating local capacity to implement the program consistent with requirements prescribed in part 8420.0200, subpart 2, item A.~~

Subp. 8. **Implementation.**

(2) A. The plan is must be implemented by ordinance as part of the local government unit's official controls under Minnesota Statutes, chapter 394, for a county; Minnesota Statutes, chapter 462, for a city; Minnesota Statutes, chapter 366, for a town; and by rules adopted under Minnesota Statutes, chapter

103D, for a watershed district; and Minnesota Statutes, chapter 103B, for a watershed management organization.

CB. After board approval and local government adoption, ~~replacement plan, exemption, and no-loss determinations are~~ decisions made in implementing this chapter and the act must be made according to the plan and ordinance.

C. Noticing, appeals, and all other administrative processes under a local plan must follow the requirements of this chapter.

~~Subp. 810. **Reporting and oversight.** An annual activity report must be provided to the board which documents compliance with plan standards as required in subpart 2. The annual report shall include such items as the number and type of permits and exemptions issued, including documentation of the area of wetlands impacted and replaced, complaints received, plan and ordinance violations including number of cease and desist orders, projects constructed, variances granted, and local appeal proceedings. In addition to and as part of the reporting requirements of Part XXXX, local government units with an approved and adopted comprehensive wetland management plan must annually provide information to the board regarding activities that vary from this chapter, this section notwithstanding, and documenting compliance with the minimum plan standards required in subpart XXX of this section. Failure to provide this information on an annual basis may subject the local government unit to penalties under 8420.XXXX, Penalty for Local Government Unit Failure to Apply Law.~~

8420.0350 XXXX HIGH PRIORITY REGIONS AND AREAS.

Subpart 1. **High priority regions.** Parts of the state that are high priority regions for preservation, enhancement, restoration, and establishment of wetlands include all major watersheds with a majority of their land area contained within counties that have lost 50 percent or more of their presettlement wetland base, which are those listed in part ~~8420.0540, subpart 5, item B~~ 8420.XXXX. In all other counties of the state, high priority regions are high priority areas approved as such by the board according to subpart 2.

Subp. 2. **High priority areas.**

A. **Planning context.** Water management plans prepared by water management organizations in the metropolitan area under Minnesota Statutes, section 103B.231, by counties outside the metropolitan area under Minnesota Statutes, section 103B.311, and by watershed districts outside the metropolitan area under Minnesota Statutes, sections 103D.401 and 103D.405, ~~must~~ may identify those areas that qualify as high priority areas for wetland preservation, enhancement, restoration, and establishment. ~~These priority areas shall be included in the next scheduled water management plan update. In order to designate a high priority area, the preservation, enhancement, restoration, and establishment of wetlands must have or achieve high public value based on the functions of wetlands. To identify high priority areas, the local government unit shall consider at a minimum those items listed in part 8420.0403 XXXX and the goals of the water management plan.~~

B. **Priority watersheds.** High priority areas should be ~~delineated~~ designated by minor or ~~major sub-watershed.~~ Plans should give sStrong consideration should be given to identifying as high priority areas minor watersheds having less than 50 percent of their original wetland acreages and where restoration of previously impacted or degraded wetlands will contribute towards achieving watershed-based goals. Consideration should also be given to watersheds that contain high valued wetlands that are at risk of degradation or loss and whose protection is integral to maintaining the ecology and condition of the watershed. Identification of high priority watersheds should be consistent with 8420.XXXX subpart 5.

~~and intact wetlands, diminished wetlands, and the areas once occupied by wetlands that have been diminished or eliminated and could feasibly be restored taking into account the present hydrology and use of the area. Plans should give strong consideration to identifying as high priority areas all type 1 or 2 wetlands, and other wetlands at risk of being lost by permanent conversion to other uses. When~~

~~individual wetlands are identified as high priority for preservation and restoration, the high priority area shall include the wetland and an adjacent buffer strip not less than 16.5 feet wide around the perimeter of the wetland and may include up to four acres of upland for each wetland acre.~~

C. **Priority wetlands.** Water management plans may identify individual wetlands, or criteria to establish individual wetlands, as high priority areas. Individual wetlands identified as high priority areas should be of high local value, at risk of degradation or loss, and consistent with any existing wetland classification criteria established under 8420.XXXX subpart 5B. Plans may also identify individual sites as high priority areas for wetland restoration and establishment. High priority restoration sites should be identified according to the criteria in 8420.XXX subpart 5C.

D. **Wetland Preservation Area Criteria.** Water management plans that identify high priority areas and intend to accept applications for wetland preservation areas under 8420.XXXX should include criteria for eligibility and prioritization of applications.

~~C. In all counties, plans may identify additional high priority areas where preservation, enhancement, restoration, and establishment of wetlands would have high public value by providing benefits for water quality, flood water retention, public recreation, commercial use, and other public uses. High priority areas should be delineated by minor or major watershed. For the purposes of this part, "watershed" means major or minor watershed or subwatershed. To identify high priority areas, the local government unit shall consider at a minimum those items listed in part 8420.0103.~~

~~D.E. **Board review and approval.** The board shall will review the inclusion of high priority areas in plans as part of the standard process for plan review established in statute. High priority areas approved by the board that are not in a high priority region listed in subpart 1 become high priority regions with board approval.~~

8420.0400 XXXX WETLAND PRESERVATION AREAS.

Subpart 1. **Purpose and eligibility.** The purpose of this part is to provide local governments with a tool to promote the preservation of high valued wetlands and the restoration and enhancement of wetland areas that will contribute towards meeting watershed-based goals identified in a local water management plan. Wetlands located in areas that are both high priority regions and high priority areas as identified in part 8420.0350XXXX and a local water plan are eligible for enrollment as wetland preservation areas. A wetland so enrolled is exempt from property tax. Sites identified as high priority areas for wetland restoration and establishment are only eligible for wetland preservation area designation after restoration of the wetland. Wetland areas receiving replacement credit are not eligible for designation as a wetland preservation area.

Subp. 2. **Landowner application for wetland preservation area.** A landowner may apply to the county or watershed district, if the county or watershed district chooses to accept wetland preservation areas, for designation of a wetland as a wetland preservation area on forms provided by the board. The applicant must include a buffer strip of upland 16.5 feet wide that meets the minimum width requirements of 8420.XXXX subpart X around the perimeter of the wetland. The applicant may include up to four acres of upland for each acre of wetland. The application must be accompanied by a restrictive covenant on a form provided by the board. The covenant will contain the same limitations on use that are provided in Minnesota Statutes, section 103F.515, subdivision 4, including a covenant that the enrolled upland area will be vegetated by the landowner to permanent vegetation other than noxious weeds. The covenant must be signed, acknowledged, and ready for recording.

Subp. 3. **County or watershed district review of application.** Upon receipt of a complete application, the county or watershed district shall send a copy of the application to the county assessor, the board, and the soil and water conservation district where the land is located. The soil and water conservation district shall prepare an advisory statement of existing and potential preservation problems or conflicts and send the statement to the owner of record and to the county or watershed district. The county or

watershed district may accept the application if the wetland is in a high priority region and high priority area, if it includes the minimum required buffer width 16.5-foot strip, and is accompanied by the proper covenant. The county or watershed district may limit or reject additional upland proposed to be included according to criteria identified in the approved plan and standards the county may establishes. The county or watershed district may reject the application if the application does not qualify, or require send it back for modification and resubmittal if that is appropriate. If the application qualifies, the county or watershed district may approve it and mark the date of approval on the application. The county or watershed district shall notify the landowner of the acceptance or denial of the application within 60 days from the date of the application. Within five working days of approval of the application, the county or watershed district shall forward it to the county recorder for recording of the restrictive covenant or memorialization of the application on the certificate of title. The county or watershed district shall also send a copy of the approved application to the county assessor for entry in the assessor's records as a wetland preservation area. The county or watershed district shall also send copies of the approved application to the soil and water conservation district, the local government unit, and the board.

Subp. 4. **Applicable statutes.** In addition to this chapter, wetland preservation areas are subject to Minnesota Statutes, sections [103F.612](#) to [103F.616](#), and the property tax provisions of Minnesota Statutes, section [272.02, subdivision 11](#).

Subp. 5. **Commencement of wetland preservation area.** The wetland is a wetland preservation area commencing 30 days from the date the county notifies the landowner of acceptance of the application under subpart 3.

Subp. 6. **Fee.** The county or watershed district may require an application fee to defray administrative costs of the program.

Subp. 7. **Maps.** ~~The county~~ ies having approved wetland preservation areas within their legal boundaries shall maintain ~~wetland preservation area~~ maps illustrating land covenanted as wetland preservation areas.

Subp. 8. **Reimbursement of unpaid taxes.** A county or watershed district with an approved wetland preservation area will be reimbursed for lost tax revenue according to Minnesota Statutes, section 275.295.

APPEALS, COMPENSATION, AND ENFORCEMENT

8420.0250XXXX APPEALS.

Subpart. 21. [Repealed, 22-SR-1877] Appeals of replacement and restoration orders to the board. A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued pursuant to subpart 3 to the board's executive director within 30 days of receipt of written notice by filing a written request for review and paying a nonrefundable filing fee to the board. The filing fee is \$200, or an amount otherwise determined by the board not to exceed \$1,000. If the written request is not submitted within 30 days, the restoration or replacement order becomes final. The executive director shall review the request and supporting evidence and render a decision within 60 days of the request for review. The executive director may stay the restoration or replacement order until the appeal is resolved.

The text of Subp. 1 was relocated here from .0290 Enforcement Procedures, Subp. 3c.

Subp. 2. **Appeal of local government unit staff decisions.** The determination of A decision made by staff becomes final if not appealed to the local government unit within 30 days after the date on which the decision is mailed to those required to receive notice of the decision. Notwithstanding the time frames of Minnesota Statutes, section [15.99](#), or any other law to the contrary, the local government unit must make a ruling within 30 days from the date of the filing of the appeal, unless the appellant and local government

unit mutually agree, in writing, to an extension of time beyond the 30 days. Appeal of a final determination decision made by staff may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located. An appeal is effective upon mailing of the petition and payment of any applicable fees to the local government unit. A filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel. ***Subpart 2 was relocated here from Determining Local Government Unit; Duties, Subpart 2.***

Subpart ~~4~~ **3. Appeal of local government unit decisions to the board.** The decision of a local government unit to approve, approve with conditions, or reject ~~a replacement plan, banking plan, public road project notice, exemption, no-loss, or wetland boundary or type request~~ an application becomes final if not appealed to the board within 30 days after the date on which the decision is mailed sent to those required to receive notice of the decision. Appeals of decisions made by local government staff must be made to the local government unit as provided for in part ~~8420.0200~~, subpart ~~1 2, item B~~. This subpart also applies to ~~those determinations which are decisions~~ made under comprehensive wetland protection and management plans.

Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

Appeal is effective upon mailing sending of the a petition and payment of a nonrefundable filing fee of \$200, or an amount otherwise determined by the board not to exceed \$1,000, to the board with evidence that a copy of the petition has been mailed sent to the local government unit. The written request should include information to support the appeal. The filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel. Another filing fee is not required for appeals that have been remanded if the filing fee was paid and the same party appeals the new decision made under remand. Subsequent to receipt of a petition, the local government unit must send a copy of the petition to all those whom it was required to send a copy of the decision.

Subp. ~~3~~ **4. Board appeal procedures.** Within 30 days after receiving the petition, the board or its dispute resolution committee or executive director ~~shall~~ must decide whether to grant the petition and hear the appeal. After considering the size of the proposed impacts and the quality of the affected wetland, any patterns of similar acts by the local government unit in administration of this chapter and the act, and the consequences of the delay resulting from the appeal, ~~The board, its dispute resolution committee,~~ or its executive director ~~shall~~ will grant the petition unless the appeal is deemed meritless, trivial, or brought solely for the purposes of delay; that the petitioner has not exhausted all local administrative remedies; or that the petitioner has not ~~posted a letter of credit, cashier's check, or cash if required by the local government unit~~ submitted the required filing fee.

The board, its dispute resolution committee, or its executive director may stay the local government unit decision until the appeal is resolved.

The board, its dispute resolution committee, or its executive director may remand the appealed decision back to the local government unit if the petitioner has not exhausted all local administrative remedies such as a local government unit evidentiary public hearing, if expanded technical review is needed, or if the local government unit's record is not adequate. If an appeal is remanded, a new application is not required and additional information may be submitted before a decision is made by the local government unit. If an appeal is remanded, tThe local government unit must make a decision on an appeal that has been remanded within 60 days unless the remand order, or a subsequent order, specifies a longer period. After granting the petition, the appeal ~~shall~~ must be heard by the dispute resolution committee and decided by the board within 60 days after the filing of the local government unit's written record, submittal of the written briefs for the appeal, and the hearing by the dispute resolution committee. Parties to the appeal are the appellant, the landowner, the local government unit, and those required to receive notice of the local government unit decision.

The board or its executive director may elect to combine related appeals and process as one decision, either multiple appeals on the same project or appeals of different local government unit decisions on the same project.

~~Upon~~ Within 30 days of the granting of an appeal, unless an extension of time is approved by the board, the local government unit ~~shall~~ must forward to the board seven copies of the written record on which it based its decision and forward one copy of the record to each of the parties to the appeal. The board will

make its decision on the appeal after hearing. Thirty days' notice of the hearing ~~shall will~~ be given by the board to the parties. The parties may present written and oral argument. When the local government unit has made formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings and the proceedings were fairly conducted, the board will ~~base its review on consider~~ the record ~~in its review~~. ~~Otherwise it The board~~ may take additional evidence, or remand the matter.

The board will affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the law to the facts, including this chapter; and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board will reverse the decision, amend it, or remand it with instructions for further proceedings.

8420.0280 APPEAL FROM BOARD DECISIONS.

Subp. 5. Appeal of board decisions. An appeal of a board decision is taken to the state court of appeals and must be considered an appeal from a contested case decision for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

8420.0268XXXX COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT UNITS.

Subpart 1. **Intervention.** At the request of a local government unit against which a compensation action is brought based at least in part on the local government unit's application of Minnesota Statutes, section 103G.222, 103G.2241, 103G.2242, 103G.237, or 103G.2372, or rules adopted by the board to implement these sections, the state, through the attorney general, ~~shall must~~ intervene in the action on behalf of the local government unit and ~~shall will~~ thereafter be considered a defendant in the action. A local government unit making a request under this subpart ~~shall must~~ provide the attorney general with a copy of the complaint as soon as possible after being served. If requested by the attorney general, the court ~~shall must~~ grant additional time to file an answer equal to the time between service of the complaint on the local government unit and receipt of the complaint by the attorney general.

Subp. 2. **Liability of state for certain costs.** The state is liable for costs, damages, fees, and compensation awarded in the action based on the local government unit's adoption or implementation of standards that are required by state law, as determined by the court. The local government unit is liable for costs, damages, fees, and compensation awarded in the action based on local standards that are more restrictive than state law and rules.

Subp. 3. **Definition.** For purposes of this part, "compensation action" means an action in which the plaintiff seeks compensation for taking private property under the state or federal constitution.

8420.0270XXXX COMPENSATION TO LANDOWNERS.

Replacement plan applicants who have completed the local government unit process and the board appeal process, and the replacement plan has not been approved as submitted, may apply to the board for compensation under Minnesota Statutes, section 103G.237.

The application must identify the applicant, locate the wetland, and refer the board to its appeal file in the matter.

The application must include an agreement that, in exchange for compensation, the applicant will convey to the state a perpetual conservation easement in the form required by Minnesota Statutes, section 103F.516. The applicant must provide an abstract of title demonstrating the ability to convey the easement free of any prior title, lien, or encumbrance. Failure to provide marketable title negates the state's obligation to compensate.

The applicant must submit official documentation from the United States Army Corps of Engineers, the Minnesota Pollution Control Agency, the watershed district or water management organization if any, the county, and the town or city, as applicable, that the proposed drain-or-fill activity impact and the proposed subsequent use of the wetland are lawful under their respective legal requirements.

The landowner must demonstrate that the proposed drain-or-fill impact is a feasible and prudent project and that the replacement plan as proposed is a reasonable good faith effort to fulfill the replacement requirements of parts 8420.0500 to 8420.0630 and the act.

If the replacement plan was approved, but with conditions or modifications, the applicant must show that the conditions or modifications make the replacement unworkable or not feasible. A plan is unworkable or not feasible if the replacement must be on land that the applicant does not own, the applicant has made good faith efforts to acquire a replacement site and not succeeded, and there is not a qualifying replacement available in a wetland bank. A plan is also unworkable or not feasible if it is not possible to carry out for engineering reasons. The applicant must show that not going ahead with the proposed project will cause the applicant damages and that disallowing the proposed use will enhance the public values of the wetland.

The applicant must submit the requirements in this part in writing, by certified mail, to the board. If the applicant wants to make oral argument to the board, it must be indicated as part of the application. The board may require that the applicant appear before the board.

If the board finds that the applicant has submitted a complete application and proved the requirements in this part, the board ~~shall~~ **must** compensate the applicant as required by law within 90 days after the board received a completed application, provided that within the same time period the applicant must convey to the board a conservation easement in the form required by Minnesota Statutes, section 103F.516. If the board does not provide the required compensation in exchange for the conservation easement, the applicant may ~~drain or fill~~ impact the wetland in the manner proposed, without replacement.

8420.0290XXXX ENFORCEMENT PROCEDURES.

Subpart 1. **Enforcement authorities.** The commissioner, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders.

Subp. 2. **Cease and desist orders.** Cease and desist orders may be issued when the enforcement authority has probable cause that an ~~drain, excavation, or fill~~ activity is being or has been conducted ~~in that impacts~~ a wetland and does not qualify for an exemption or a no-loss ~~determination~~ under parts 8420.0210XXXX and 8420.0220XXXX and is being or has been conducted without prior approval ~~of a replacement plan~~ by a local government unit under part 8420.0230XXXX or involving a ~~determination decision~~ stayed by the board pursuant to part 8420.0250XXXX.

A cease and desist order must not be issued if the landowner has and is complying with, a valid replacement plan, exemption, or no-loss, ~~or replacement plan determination from approved by~~ the local government unit, or a completed and submitted public road project notification that has not been stayed, remanded, or reversed on appeal under provisions of part 8420.0250XXXX, or has sufficient evidence to support qualifying for an exemption or no-loss ~~determination~~.

The enforcement authority issuing a cease and desist order ~~shall promptly must~~ submit copies to the soil and water conservation district, local government unit, and Department of Natural Resources within 10 days.

The sentence above was relocated here from immediately below the following paragraph.

The enforcement authority ~~shall~~ **must** advise the landowner that the landowner's written application, if any, for an replacement plan, exemption, or no-loss, ~~or replacement plan determination~~, should be made immediately to the local government unit and that ~~whatever drain, excavation, or fill work any wetland~~ that has been ~~done impacted~~ may require restoration if the application for replacement plan, exemption, or no-loss, ~~or replacement plan determination~~ is denied or reversed on appeal.

If an application for an replacement plan, exemption, or no-loss, ~~or replacement plan determination approval~~ is triggered by a cease and desist order, the local government unit ~~shall~~ **must** make the ~~determination decision~~ in accordance with parts 8420.0210XXXX to 8420.0230XXXX.

If the ~~determination decision~~ is that the activity is exempt or results in qualifies for a no loss ~~of wetland~~, the decision maker ~~shall~~ **must** request that the enforcement authority rescind the cease and desist order, pending the outcome of any appeal, and notify the soil and water conservation district, the enforcement authority, and the landowner.

If the application is denied, the decision-maker ~~shall~~ **must** immediately notify the soil and water conservation district, the enforcement authority, and the landowner.

In cases where the cease and desist order has been issued to a local government unit, the ~~determination decision~~ of exemption or no-loss ~~shall~~ **must** be made by the board.

The above sentence was relocated here from the third sentences above its current location.

Subp. 3. **Restoration and replacement orders.** The enforcement authority ~~shall~~ must issue a restoration order or replacement order when:

- A. the ~~drain, excavation, or fill impact~~ has already been completed when discovered, or after a cease and desist order has been issued and the landowner does not apply for a ~~a replacement plan~~, exemption, ~~replacement plan~~, or no-loss ~~determination~~ within three weeks;
- B. the local government unit grants the application but it is reversed on appeal; or
- C. the local government unit denies the application.

Promptly upon being informed by the enforcement authority or the local government unit of the need, the soil and water conservation district staff person ~~shall~~ must inspect the site and prepare a plan in consultation with the local government unit and the enforcement authority for restoring the site to its prealtered condition. Restoration ~~shall~~ must be ordered unless the soil and water conservation district, with the concurrence of the technical evaluation panel ~~and the enforcement authority~~, concludes that restoration is not possible or prudent. The soil and water conservation district ~~shall~~ must incorporate its plan into a restoration or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner or responsible party.

Subp. ~~3a~~ 4. **Contents of order.** A restoration order must specify dates by which the landowner or responsible party must either:

A. restore the wetland according to the soil and water conservation district plan and obtain a certificate of satisfactory restoration from the soil and water conservation district; or

B. submit a complete replacement plan, exemption, or no loss application to the local government unit. If ~~the replacement plan~~ an application submitted under item B is denied, the landowner or responsible party ~~shall~~ must restore the wetland as specified in the order. The restoration order ~~shall~~ must be rescinded if the landowner or responsible party obtains approval of an after-the-fact replacement plan, exemption, or no-loss ~~determination~~ from the local government unit that is not reversed on appeal. A replacement order must specify a date by which the landowner or responsible party must submit a complete replacement plan application to the local government unit and a subsequent date by which the landowner or responsible party must replace the wetland according to the approved replacement plan and obtain a certificate of satisfactory replacement from the soil and water conservation district. The restoration or replacement order must specify a time period of at least 30 days for submittal of a complete application under this subpart.

A certificate of satisfactory restoration or replacement may be issued with conditions that must be met in the future, such as but not limited to, issues with wetland vegetation, weed control, inspections, monitoring, or hydrology. Failure to fully comply with any conditions that have been specified may result in the issuance of a new restoration or replacement order.

Failure to submit a complete application under item B within the time period specified in the restoration order, or as properly extended, will result in the landowner or responsible party having to comply with the order before an application under this chapter may be submitted, unless the local government unit and the enforcement authority agree otherwise or unless allowed under appeal.

Subp. ~~3b~~ 5. **Enforcement authority orders.** If the soil and water conservation district, with the concurrence of the technical evaluation panel ~~and the enforcement authority~~, determines that restoration will not restore all the loss caused by the ~~drain, excavation, or fill activity impact~~, the enforcement authority may order a combination of restoration and replacement, or may order replacement rather than restoration. The order must direct the landowner or responsible party to obtain replacement plan approval from the local government unit. The order must specify that if replacement plan approval is not obtained, the landowner or responsible party must restore the wetland as ordered. Each cease and desist, restoration, and replacement order ~~shall~~ must state that violation of the order is a misdemeanor. If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the soil and water

conservation district, with the concurrence of the technical evaluation panel ~~and the enforcement authority~~, shall must determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner or responsible party must follow the replacement plan process in subpart 4 ~~6~~ and parts 8420.~~0500XXXX~~ to 8420.~~0630XXXX~~.

Subp. 4 ~~6~~. **After-the-fact replacement.** If a landowner or responsible party seeks approval of a replacement plan after the proposed project has already impacted the wetland or if sufficient replacement has not been provided under an approved replacement plan, the local government unit ~~shall must~~ require the landowner or responsible party to replace the impacted wetland at a ratio twice the replacement ratio otherwise required, unless the ~~local government unit technical evaluation panel~~ and enforcement authority concur that an increased ratio is not required.

Subp. 5 ~~7~~. **Misdemeanor.** A violation of an order issued under this part is a misdemeanor and must be prosecuted by the county attorney where the wetland is located or the illegal activity occurred.

ACTIVITIES UNDER DEPARTMENT OF NATURAL RESOURCES AUTHORITY

8420.~~0300XXXX~~ MINING.

Wetlands ~~may must~~ not be ~~drained, excavated, or filled~~ impacted as part of a project for which a permit to mine is required by Minnesota Statutes, section 93.481, except as approved by the commissioner. ~~Draining, excavating, or filling of~~ Impacts to wetlands created by pits, stockpiles, or tailing basins by actions whose purpose was not to create the wetland are exempt under part 8420.~~0122XXXX~~.

A. For new mining operations that are permitted and initiated after July 1, 1993:

- (1) mining ~~shall must~~ not be conducted without first receiving a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals; and
- (2) the mining and reclamation operating plans or annual reports submitted by the applicant as required in the permit to mine ~~shall must~~ include an approved wetland replacement plan that meets the same principles and standards for replacing wetlands under parts 8420.~~0500XXXX~~ to 8420.~~0630XXXX~~.

B. For mining operations in existence before July 1, 1993, and operated on or after that date under a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals:

- (1) ~~no draining, excavating, or filling activities shall be conducted within~~ wetlands for which ~~these activities impacts~~ were approved but not initiated before July 1, 1993, must not be impacted until the operating plan or annual report as required in the permit to mine includes an approved wetland replacement plan for the undisturbed wetlands. The wetland replacement plan ~~shall must~~ meet the same principles and standards for replacing wetlands under parts 8420.~~0500XXXX~~ to 8420.~~0630XXXX~~;
- (2) for filling activities that were approved and initiated before July 1, 1993, the placement of fill atop a stockpile, roadway, or other mining-related facility that occupies a wetland filled before July 1, 1993, ~~shall will~~ be allowed to continue within the areal extent, as it existed on July 1, 1993, of the stockpile, roadway, or other mining-related facility without the requirement of a replacement plan or amendment of the permit to mine. An expansion of the areal extent of the fill in the wetland requires an approved replacement plan in the operating plan or annual report as required in the permit to mine, according to subitem (1);
- (3) for draining activities that were approved and initiated before July 1, 1993, the draining of a wetland to facilitate mining, using ditches and other drainage facilities that existed on July 1, 1993, ~~shall will~~ be allowed to continue without the requirement of a replacement plan or amendment of the permit to mine. Maintenance of the ditches and structures ~~shall will~~ be allowed without the requirement of a replacement plan or amendment of the permit to mine, provided that as a result of the maintenance, wetlands are not drained beyond the extent that existed as of July 1, 1993. Otherwise, the permit to mine must be amended to provide for replacement according to subitem (1).

C. Replacement wetlands approved under this part must only be used for mining-related impacts covered under a permit to mine unless the credits are approved and deposited in the state wetland bank according to parts 8420.XXXX(the old .0700) to 8420.XXXX(the old .0760)

CD. Applicable procedures are those required for permits to mine.

DE. This part ~~shall~~ does not apply to peat mining as defined under Minnesota Statutes, section 93.461, that is subject to the mine permit and reclamation requirements under Minnesota Statutes, sections 93.44 to 93.51, and the rules of the commissioner adopted under those sections.

8420.XXXX STANDARDS AND CRITERIA FOR IDENTIFICATION, PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS.

8420.1010 PURPOSE. Subp. 1. Purpose. The purpose of ~~this parts 8420.1010 to 8420.1070~~ is to provide minimum standards and criteria for the identification, protection, and management of calcareous fens as authorized by Minnesota Statutes, section 103G.223. Calcareous fens, as identified by the commissioner, may must not be ~~drained or filled impacted~~ or otherwise altered or degraded, wholly or partially, by any action, unless the commissioner, under an approved except as provided for in a management plan decides some alteration is necessary approved by the commissioner.

The exemptions contained in Ppart 8420.0122XXXX does not apply to calcareous fens.

Language from the Sequencing part that pertained to calcareous fens was incorporated into this subpart.

8420.1020 IDENTIFYING CALCAREOUS FENS. Subp. 2. Identifying calcareous fens. A calcareous fen is a peat-accumulating wetland dominated by distinct groundwater inflows having specific chemical characteristics. The water is characterized as circumneutral to alkaline, with high concentrations of calcium and low dissolved oxygen content. The chemistry provides an environment for specific and often rare hydrophytic plants.

8420.1030 PROCEDURES TO LIST CALCAREOUS FENS. Subp. 3. Procedures to list calcareous fens.

A. The commissioner ~~shall~~ must investigate wetlands to determine if the wetland is properly identified as a calcareous fen.

B. The commissioner ~~shall~~ must maintain a current list of known calcareous fens in the state and their location.

C. The commissioner ~~shall~~ must provide an updated list of calcareous fens to the board for further distribution.

8420.1040 MANAGEMENT PLANS. Subp. 4. Management plans. Calcareous fens ~~may~~ must not be ~~drained or filled impacted~~ or otherwise altered or degraded except as provided for in a management plan approved by the commissioner. The commissioner will provide technical assistance to landowners or project sponsors in the development of management plans.

8420.1050 RESTORATION. Subp. 5. Restoration. The commissioner may approve management plans to restore or upgrade a previously damaged calcareous fen.

8420.1060 APPEALS. Subp. 6. Appeals.

A. A landowner or project proposer may challenge the commissioner's determination that a wetland is a calcareous fen or the commissioner's calcareous fen management plan by demanding a hearing. The hearing will be carried out in the same manner as water permit hearings under Minnesota Statutes, chapter 103G.

B. The hearing must be demanded within 30 days after mailed notice of the commissioner's decision to the project proposer, otherwise the decision becomes final and may not be challenged by the project proposer.

C. Appeal of the commissioner's decision after the hearing must be done in the manner provided for appeals from contested case decisions in Minnesota Statutes, chapter 14.

~~8420.1070 ENFORCEMENT PROCEDURES.~~ Subp. 7. Enforcement procedures. Enforcement procedures for calcareous fens ~~shall~~ must be conducted consistent with Minnesota Statutes, sections 103G.141 and 103G.2372, except that necessary restoration or replacement activities, if required, will be determined by the commissioner, in consultation with the local soil and water conservation district.